IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8336 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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STATE OF GUJARAT

Versus

DEVABHAI TAPUBHAI

Appearance:

1. Special Civil Application No. 8336 of 1991

MR RC KODEKAR, AGP for Petitioner

MRS DT SHAH for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 13/08/2002

ORAL JUDGEMENT

By filing this petition under Articles 226 & 227 of the Constitution, the State of Gujarat has challenged legality of Award dated July 6, 1990, rendered in

Reference (LCS) Nos. 125/1989 & 126/1989, by which the petitioner is directed to reinstate two workmen, namely, Smt. Kanuben Devabhai and Mr.Devabhai Tapubhai, in service, and pay 70% of back wages to Mr. Devabhai Tapubhai.

2. Smt. Kanuben Devabhai and Mr. Devabhai Tapubhai were employed in social forestry work which was undertaken by the Forest Officer, Lakhtar, District : Surendranagar. Though both of them had put in five years of service, their services were terminated on June 1, 1984, without following the procedure prescribed in the Industrial Disputes Act, 1947. Therefore, they had raised disputes before the Assistant Labour Commissioner regarding illegal termination of their services. On failure of conciliation proceedings, references were made to the Labour Court, Surendranagar, for adjudicating the question whether the services of the workmen were illegally terminated or not. The reference made at the instance of Smt. Kanuben Devabhai was registered as Reference (LCS) No.125/1989; whereas the reference made at the instance of Mr. Devabhai Tapubhai was registered as Reference (LCS) No. 126/1989. The respective workmen had filed Statement of Claims, to which reply was filed by the petitioner. As common questions of facts and law were involved in the adjudication of the disputes referred to the Labour Court, both the References were consolidated and parties had led common evidence in support of their respective pleas. On consideration of the evidence led by the parties, the Labour Court deduced that it was proved by the workmen that they had rendered continuous service of more than 240 days in a year and that juniors to them were retained in service after their discharge from service. It was noticed by the Labour Court that the procedure prescribed in the Industrial Disputes Act, 1947 was not followed by the petitioner before relieving the workmen from service. Under the circumstances, it was held that retrenchment of the workmen was illegal. Smt. Kanuben Devabhai had not stepped into witness box and it was found that during the interregnum period she had derived income by sale of vegetables. In view of the said evidence, the Labour Court held that Smt. Kanuben Devabhai was not entitled to back wages. In the ultimate order, the Labour Court has directed the petitioner to reinstate both the workmen in service and pay 70% of back wages to Mr. Devabhai Tapubhai, giving rise to the present petition.

3. I have heard the learned counsel for the parties. It may be stated that the order passed by the Labour Court in Reference (LCS) No. 125/1989 in favour of Smt.

Kanuben Devabhai is not challenged by the petitioner at all and is accepted. Under the circumstances, it would not be proper for the High Court, in a petition under Article 227 of the Constitution, to set aside that part of the common Award which is in favour of Devabhai Tapubhai, who is impleaded as the sole respondent in the present petition. The contention that social forestry work meant for preservation of forests and environment, is not an 'industry' and, therefore, the impugned Award is liable to be set aside, has no substance. Except the bare averments made in the Written Statement to the effect that the petitioner is not an 'industry', no factual data was laid by the petitioner before the Labour Court indicating the nature of the work undertaken by the Forest Officer, or the nature of the duties performed by the workmen. No evidence was led by the petitioner to establish that social forestry work undertaken by the Forest Officer, Lakhtar, was not perennial in nature. Under the circumstances, the principle laid down by the Supreme Court in Chief Conservator of Forests and another v. Jagannath Maruti Kondhare, AIR 1996 SC 2898, would apply to the facts of the present case. In the said case, Forest Department of State Government of Maharashtra had framed a Scheme known as Panchgaon Parwati Scheme intending to fulfil recreational and educational aspirations of public. Further, the Forest Department had undertaken social forestry work meant for preservation of forests and environment. The Supreme Court has held that the work undertaken by the Department cannot be regarded as part of sovereign function of State and Forest Department is an 'industry'. The above-quoted decision of the Supreme Court was followed by the Division Bench of this Court in Letters Patent Appeal No. 304/2000, decided on July 17, 2000, and the decision of the Division Bench has been upheld by the Supreme Court in Civil Appeal No. 6412/2000, decided on March 26, 2001. In the present case, necessary positive facts were established by the workmen to enable the Labour Court to come to the conclusion that the petitioner is an 'industry' and this is quite evident from the deposition of Devabhai Tapubhai as well as the admissions made by the Range Forest Officer in his deposition, which was recorded as Exh.23. Therefore, the plea that the petitioner is not an 'industry' is hereby rejected. The question whether the workmen had put in 240 days of continuous service or not, is a pure question of facts and no ground has been made out by the learned counsel for the petitioner to interfere with the same in the present petition. It is not in dispute that the provisions of the Industrial Disputes Act,1947 were not followed by the petitioner before relieving the workmen

from service, nor the finding recorded by the Labour Court that after retrenchment of the workmen, the employees who were junior to them, were retained in service, is challenged before this Court. Under the circumstances, there is no manner of doubt that retaining juniors in service was contrary to the provisions of the Industrial Disputes Act and arbitrary. Therefore, direction to reinstate the workmen cannot be regarded as erroneous. Good grounds have been assigned by the Labour Court for granting 70% of back wages to the respondent and it could not be demonstrated before this Court that grant of 70% of back wages to the respondent was either illegal or contrary to the evidence on record. Thus, I do not find any merit in the petition and the petition is liable to be dismissed.

For the foregoing reasons, the petition fails and is dismissed. Rule is discharged, with no orders as to costs. Ad-interim relief granted earlier is hereby vacated.

(J.M.Panchal,J.)

(patel)